IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO.1126 OF 2006

In

SUIT NO.232 OF 1984

Krishnakumar Agarwal since deceased
through his heirs and legal
representatives:

1a. Mrs.Padma Agarwal & Ors. : Plaintiffs

V/s.

United Commercial Bank : Defendant

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Mr.Parag Kale for the defendant in support.

Mr.Amit Jamsandekar i/b. Crawford Bayley & Co., for the plaintiffs to show cause.

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CORAM : A.M. KHANWILKAR, J.

DATE : JUNE 11, 2007.

P.C.

1. Heard the counsel for the parties. Perused the pleadings. The plaintiffs have not filed any reply controverting the assertions made by the defendant in the affidavit-in-support of the Chamber Summons. The counsel for the plaintiffs submits that it is not necessary to file such affidavit because the facts stated by the

defendant in the affidavit-in-support are matters within the personal knowledge of the defendant in respect of which the plaintiffs cannot make observations or comments. Be that as it may, this Chamber Summons is for condoning the delay of almost 20 years in filing the written statement by the defendant in the plaintiffs' suit. The explanation offered in the affidavit-in-support is that after service of the writ of summons, the defendant had engaged the services of an Advocate (whose name I would prefer not to be mentioned in this order), and gave instructions to appear. The fact that the said Advocates were engaged by the defendant-Bank is substantiated by the contemporaneous record in the shape of communication sent by the said Advocates dated 6.7.2006 addressed to the defendant-Bank. In fact, the said communication also supports the case of the defendant that the written statement to be filed in the present suit was drafted and was kept ready as back as in 1986. However, the defendant asserts that because of high demand of fees by the Advocates for settling the written statement, some controversy arose with the said Advocates. As a result, the matter remained pending unattended. It is the case of the defendant that no communication was received from the said Advocates thereafter. As a result, the defendant verily believed that the written statement has been filed. These matters are stated on affidavit. The facts so

stated as mentioned earlier have remained uncontroverted. Going by these facts, it is evident that even if there is delay of almost 20 years, that cannot be said to be intentional delay. The defendant had taken all necessary steps with promptitude, but the written statement remained to be filed for reasons beyond the control of the defendant, as mentioned in the affidavit. This is, in my opinion, sufficient cause for showing indulgence to the defendant-Bank, which is a Nationalised Bank. If the defendant were to be denied opportunity of contesting the proceedings, the matter would end up in a decree against the defendant which amount will have to be paid from the public fund and deposits with the said Bank. In the interest of justice and taking an overall view of the matter, I am inclined to accede to the request of the defendant.

2. The counsel for the plaintiffs, however, would rely upon the decision of the Apex Court in M/s.Aditya Hotels (P) Ltd. v. Bombay Swadeshi Stores Ltd. & Ors. (AIR 2007 SC 1574). It is not possible to read the decision in the manner in which the same is pressed into service by the plaintiffs. The Apex Court has clearly observed that there is discretion with the Court to grant further time to file written statement. Insofar as proceedings before the High Court are concerned, besides the statutory

provisions in the C.P.C., the procedural aspect is governed by the provisions of the High Court (Original Side) Rules. There is ample power in this Court to exercise discretion in a given case, if the fact situation of the case so warrants. In my opinion, as observed earlier, in the interest of justice, the defendant deserves indulgence. The plaintiff, at best, borrowing the words of the Apex Court in the case of M/s.Aditya Hotels (P) Ltd. (supra) would be entitled to costs to be paid by the defendant for the delay in filing the written statement. This course I am inclined to adopt is also for the reason that the suit in question is of the year 1984. There are suits which are older than the present suit which are waiting for hearing. As such, no serious prejudice would be caused to the plaintiffs if the defendant is permitted to file written statement, though belatedly.

3. Accordingly, the Chamber Summons is made absolute in terms of prayer clause (a) on condition that the defendant shall pay costs quantified at Rs.7,500/- to the plaintiffs within four weeks from today, failing which the office to proceed on the assumption that this Chamber Summons is dismissed for non-prosecution without further reference to Court. If costs are paid in time, as aforesaid, the suit to proceed, in accordance with law. On payment of costs,

the defendant will be entitled to file written statement in the Registry which may be taken on record.

A.M. KHANWILKAR, J.